

whether the claim on which the defendant's caveat No. CV/51305 was based did raise a serious question to be tried;

- (b) the learned Judge was wrong in law in applying the doctrine of delay as a ground for removing the defendant's caveat No. CV/51305 in the circumstances of the case;

and held that the case of *Plimmer Bros. v. St. Maur*⁽¹⁾ might be distinguished and that in an application for the removal of a caveat, the court should consider whether there was a serious question to be tried. If the court were satisfied that there was, then the court would not order the removal of the caveat. The decision of the Privy Council in *Eng Mee Yong & Ors. v. Letchumanan*⁽²⁾ was followed.

The Order of Court is reproduced below.

Cases referred to:

- (1) *Plimmer Bros. v. St. Maur* (1906) 26 N.Z.L.R. 294.
- (2) *Eng Mee Yong & Ors. v. Letchumanan* [1979] 2 M.L.J. 212.

COURT OF APPEAL.

Ronnie Quek Cheng Chye for the appellant.
Miss Molly Lim for the respondent.

"ORDER OF COURT

IN OPEN COURT

The 19th day of April 1983

THIS APPEAL coming on for hearing on the 19th day of 1983 in the presence of Counsel for the Appellant Mr. Ronnie Quek Cheng Chye and Counsel for the Respondent, Miss Molly Lim AND UPON READING the Record of Appeal herein AND UPON HEARING COUNSEL as aforesaid THIS COURT DOTH ORDER that:

- (a) This Appeal be allowed.
- (b) The Order of Court dated the 7th day of May 1982 made by the Honourable Mr. Justice T.S. Sinnathuray in Originating Summons No. 165 of 1982 be and is hereby set aside.
- (c) There be no order as to costs in the proceedings in Originating Summons No. 165 of 1982.
- (d) The Respondent to pay the Appellant the costs of this Appeal.
- (e) The sum of \$500.00 deposited by the Appellant with the Accountant-General by way of security for the Respondent's costs of this Appeal be paid out to the Appellant or to his solicitors.

A Given under my hand this 26th day of April 1983.

Sd.
Asst. Registrar."

Solicitors: *Shook Lin & Bok; Chung & Co.*

B

RE ANNIE LIM

C [O.C.J. (Chan Sek Keong J.C.) November 27, 1986]

[Singapore — Bankruptcy No. 45 of 1986]

Bankruptcy — Bankruptcy Notice — Application to set aside — Judgment sum disputed.

D The judgment debtor in the present case applied by way of motion to set aside the Bankruptcy Notice, the Order for substituted service of the Notice and the service itself. The judgment debtor submitted, *inter alia*, that

- (1) the Bankruptcy Notice did not state the exact sum which the applicant was called upon to pay;

E (2) the judgment debt is disputed and the applicant has made an application to set aside the judgment obtained against her in default of appearance.

Held, dismissing the application: (1) a Bankruptcy Notice which follows precisely the terms of a judgment, as in the present case, is valid even though the interest is not claimed as a fixed sum therein so long as it is capable of being calculated or ascertained by some formula or other means;

F (2) there was no substance in the complaint that the Bankruptcy Notice did not state the exact amount payable by the applicant;

G (3) the court cannot at this stage go behind the judgment and inquire into the validity of the debt, as it can in a petition. Accordingly, until the judgment in the original suit is set aside, the Bankruptcy Notice in this case conforms to the terms of the judgment and remains valid

Cases referred to:

- H (1) *Re Debtor 478 of 1908* [1908] 2 K.B. 684.
- (2) *Re Easton* (1893) 10 Morr. 111; 9 T.L.R. 408.
- (3) *Re a Debtor (30 of 1956)* [1957] Ch. 381.
- (4) *In re Foster; Ex parte Basan* (1885) 2 Morr. 29.

MOTION.

I *Yap Seng Chaye* for the applicant.
David Hew for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the debtor to set aside a Bankruptcy Notice which

was served on her by substituted service by way of an advertisement in the *Straits Times* on August 13, 1986. The Notice reads as follows:

"TAKE NOTICE that within seven (7) days after service of this Notice on you, excluding the day of such service, you must pay to SOCIETE GENERALE, a company incorporated with limited liability according to the laws of France and having a place of business at 30 Robinson Road, # 01-01 Tuan Sing Towers, Singapore 0104, the sums of:

- (a) US\$269,955.30 equivalent to S\$577,974.30 at the exchange rate of US\$1.00 to S\$2.141 with interest accruing at the rate of 1.5% per annum over the applicable Singapore Inter-Bank Offer Rate (SIBOR) from the 24th October 1984 until payment.
- (b) S\$1,284,529.64 with interest accruing at the rate of 2% per annum over Societe Generale's prevailing prime lending rate from the 24th October 1984 until payment.
- (c) S\$148,798.74 with interest accruing at the rate of 3% per annum over Societe Generale's prevailing prime lending rate from the 24th October 1984 until payment

claimed by them as being the amount due under an Order of Court dated the 21st day of October 1985 obtained against you in the High Court in Originating Summons No. 659 of 1985 whereon execution has not been stayed, or you must secure or compound for the said sum to their satisfaction or the satisfaction of this Court, or you must satisfy this Court that you have a counter-claim, set-off or cross-demand against them which equals or exceeds the sum claimed by them and which you could not set up in the action in which the Order of Court was obtained.

Dated the 6th January 1986."

The description of the amounts payable under the Bankruptcy Notice follows *verbatim* the monetary judgment entered by the judgment creditor against the applicant by the Order of Court dated October 21, 1985 in Originating Summons No. 659 of 1985 in default of appearance by the applicant to the Originating Summons which was also served on her by substituted service by way of posting at her previous address. She contends that she did not have notice of the judgment until she read the advertisement of the Bankruptcy Notice against her.

Although this application was made within 7 days of her being served with the Bankruptcy Notice, it is not an application under Rules 94 and 96(1) of the Bankruptcy Rules. The application is by way of Motion for an order that the Bankruptcy Notice, the Order for Substituted Service thereof and the service itself be set aside on the grounds that the same are void and ineffective. The grounds disclosed in the applicant's affidavit are:

- (1) the Bankruptcy Notice had expired before the

Order for Substituted Service was granted and no order extending the time of service was granted;

- (2) the Order for Substituted Service should not have been granted as it was made after one personal service was attempted;
- (3) the Bankruptcy Notice did not state the exact sum which the applicant was called upon to pay;
- (4) the judgment debt is disputed and the applicant has made an application to set aside the judgment obtained against her in default of appearance.

During the hearing before me, counsel for the applicant also argued that the judgment sum was on the face of it in excess of the amount due and therefore the Bankruptcy Notice which was founded on such a judgment was also bad.

There is no substance in grounds (1) and (2) as the time for service of the Bankruptcy Notice was extended by an Order of Court made on July 25, 1986 and the Order for Substituted Service was made after four attempts to serve on the applicant had been made in vain.

Grounds (3) and (4) can be considered together. Counsel for the applicant submitted that a bankruptcy notice must be strictly construed by reason of the penal consequences which arise therefrom and that a bankruptcy notice which does not state the exact amount payable by the debtor is defective. He cited *Re a Debtor 478 of 1908*,⁽¹⁾ where a bankruptcy notice requiring payment of interest which, owing to an error in calculation, was in excess of 11.5s.6d. was set aside, as an example of the strict approach of the courts.

Counsel also referred to note (a) in Vol. 7 *H Atkins Court Forms* 4th ed. at page 203 where it is stated that "The amount inserted can only be that for which the creditor is entitled to issue execution under the judgment at the time of the issue of the notice. The sum may thus include costs directed to be paid and any statutory interest due on the judgment debt." His argument is that interest due on the judgment debt is 8% p.a. under O.42 Rule 12 of the Rules of the Supreme Court 1970 whereas the judgment debt and the Bankruptcy Notice based thereon requires payment of interest at 1.5% p.a. above SIBOR and 2% above the judgment creditors' prevailing prime rate.

A bankruptcy notice must be in the prescribed form, with such variations as circumstances may require (see Rule 92 of the Bankruptcy Rules), requiring the debtor to pay the judgment sum ordered to be paid in accordance with the terms of the judgment or order. This is exactly what the creditor did. His bankruptcy notice follows exactly the terms of the judgment: see section 3(1)(i) of the Bankruptcy Act (Cap. 18). In my view a Bankruptcy Notice which follows precisely the terms of a judgment, as in this case, is valid even though the interest is not claimed as a fixed sum therein so long as it is capable of being calculated or ascertained by some formula or other means. The applicant complains that she did not know what sum to pay under the judgment. The short answer is that she would have found out if she had written to the creditor for the exact amount payable under the judgment. The authorities cited by counsel for the applicant do not assist him in this matter as they concern bankruptcy notices where the amount required to be paid was in excess of the amount of the final judgment. In the present case, the real complaint is not that the Bankruptcy Notice required payment of an amount in excess of the final judgment but that the final judgment was for an unascertained sum which was also in excess of the amount owing by the applicant in that the final judgment carried interest on the judgment amount in excess of the statutory rate of interest.

I am of the view that there is also no substance in the complaint that the Bankruptcy Notice does not state the exact amount payable by the applicant. What counsel meant by "exactness" was not that the amount of interest could not be calculated at all but that because the judgment amount carried interest at what he alleged was in excess of the statutory rate, the Bankruptcy Notice required payment of an amount which would not have been the same as the judgment amount if it had carried interest at the statutory rate. This is entirely speculative as no evidence was produced to show that the rate of interest on the judgment debt was in excess of the statutory rate of 8% per annum.

Even if it is true, the applicant is not entitled to rely on this ground for the purpose of setting aside a bankruptcy notice as the court cannot at this stage go behind the judgment and inquire into the validity of the debt, as it can in a petition: see *Re Easton*,⁽²⁾ *Re a Debtor (30 of 1956)*.⁽³⁾ Accordingly, until the judgment is set aside, the Bankruptcy Notice in this case conforms to the terms of the judgment and remains valid.

A The applicant's counsel is in fact attempting to pre-empt indirectly the issue which has been raised directly in Summons in Chambers 9071/85 in Originating Summons No. 659 of 1985 which is fixed for hearing on January 5, 1987.

B It would however appear from *Re Foster*⁽⁴⁾ that a bankruptcy court has the discretion to order the hearing of an application of this nature to be adjourned *sine die*, with liberty to apply, until the hearing of the application to set aside the judgment. In that case, the Court of Appeal held, however, that the filing of a statement of claim by itself was not a justification for interfering with the operation of the bankruptcy notice as a statement of claim was not evidence that the debtor had reasonable grounds for bringing the action to set aside the judgment in view of the pending application to set aside. I do not wish to go into the question as to whether the applicant has reasonable grounds to set aside the judgment in view of the pending application to set it aside. Moreover as the applicant is not barred from resisting any bankruptcy petition on the default judgment, I do not think that any purpose will be served by adjourning this application to await the hearing of the application to set aside the judgment. Accordingly I dismiss this application with costs.

Application dismissed.

F Solicitors: *Low & Yap; Tang & Tan.*

G **ALGEMENE BANK NEDERLAND N. V. v. DR. TAN CHIN TIONG & ANOR.**

[O.C.J. (Chan Sek Keong J.C.) December 30, 1986]

[Singapore — Originating Summons No. 989 of 1986]

H *Conveyancing — Sale and purchase of property — Objection to title — Discrepancy in Indenture — Whether good title could be deduced despite this — Property Tax Act (Cap. 144), s. 35(1)(b).*

I The plaintiffs in this case, as owners, granted an option dated December 23, 1985, to the defendants to purchase the property for \$750,000.00. This was subject to the Singapore Law Society's Condition of Sale 1981, Condition 4 of which stated:

"A good title shall be deduced. The Purchasers shall not investigate or make any objection in respect of any title deeds lawfully not in the possession or custody of the Vendor."